

REMARKS

This Amendment, submitted in response to the Office Action dated April 15, 2005, is believed to be fully responsive to each point of rejection raised therein. Accordingly, favorable reconsideration on the merits is respectfully requested.

Claims 1-16 are all the claims pending in the application. Claim 1 has been amended to include the subject matter of allowable claim 2, claim 8 has been amended to include the subject matter of allowable claim 9, and claim 16 has been amended to include subject matter similar to allowable claim 9. Consequently, claims 1, 8 and 16 and their dependent claims should be deemed allowable. In addition, claims 1, and 3-8 and 10-16 were amended for reasons of precision of language and consistency, and do not narrow the literal scope of the claims and thus do not implicate an estoppel in the application of the doctrine of equivalents. In addition, the amendments to the claims were not made for reasons of patentability as apparent from the discussion below.

I. Double Patenting

Claim 1 has been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/918,504. Claims 8 and 16 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 09/918,504.

Applicant respectfully requests that the Examiner hold these rejections in abeyance until one or the other of the two pending applications issues as a patent. Specifically, according to MPEP § 804 I.B., if a provisional double patenting rejection in one application is the only rejection remaining, then the Examiner should withdraw the provisional rejection and permit that application to issue as a patent, thereby converting the provisional double patenting rejection in the other application, i.e., the '504 application, into a bona fide double patenting rejection at the time the one application issues as a patent. Thus, if all other claim rejections are withdrawn, claims 1, 8 and 16 should be found allowable and the present application should be permitted to issue as a patent.

II. Claim Rejections under 35 U.S.C. § 102

Claims 1, 8 and 16 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Usuba et al. (U.S. Patent No. 6,614,754). As indicated above, claim 1 has been amended to include the subject matter of allowable claim 2, claim 8 has been amended to include the subject matter of allowable claim 9 and claim 16 has been amended to include subject matter similar to allowable claim 9. Consequently, claims 1, 8 and 16 and their dependent claims should be deemed allowable.

III. Claim Rejections under 35 U.S.C. § 103

Claims 3 and 10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Usuba et al. in view of Ellinas et al. (U.S. Patent No. 6,760,302). Claims 3 and 10 should be deemed allowable by virtue of their dependency to claims 1 and 8 for the reasons set forth above.

IV. Allowable Subject Matter


The Examiner has indicated that claims 2, 4-7, 9, and 11-15 contain allowable subject matter and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 1 has been amended to include the subject matter of allowable claim 2 and claim 8 has been amended to include the subject matter of allowable claim 9.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Ruthleen E. Uy
Registration No. 51,361

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

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